

Dichello Construction, Inc. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5540

May 8, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

Upon a charge filed by Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO (Fund) on January 17, 1992, the General Counsel of the National Labor Relations Board issued a complaint, compliance specification and notice of hearing against Dichello Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act and alleging the amounts that the Respondent was required to pay to remedy the alleged unfair labor practices. Although properly served copies of the charge and complaint, compliance specification and notice of hearing, the Respondent has failed to file an answer.

On April 6, 1992, the General Counsel filed a Motion for Summary Judgment and for Issuance of Board Decision and Order, with exhibits attached. On April 9, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The complaint, compliance specification and notice of hearing states that unless an answer is filed within 21 days of service, "all the allegations in the complaint and compliance specification shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment and for Issuance of Board Decision and Order disclose that the Respondent was advised, by letter dated March 24, 1992, and sent by certified mail to the Respondent at its business address in Plantsville, Connecticut, that if no answer to the complaint, compliance specification and notice of hearing was received by the Regional Office by the close of business March 31, 1992, the Regional Office would seek summary judgment based on the Respondent's failure to respond to all allegations as set forth in the complaint, compliance specification and notice of hearing. A copy of this letter was received at the Respondent's business address on March 25, 1992. To date, no answer or request for an extension of time to file an answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment and for Issuance of Board Decision and Order.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Dichello Construction, Inc., a Connecticut corporation with an office and place of business in Plantsville, Connecticut (its facility), has been engaged as a contractor in the building and construction industry. During the 12-month period ending January 31, 1992, the Respondent, in the course and conduct of its business operations, performed services valued in excess of \$50,000 for Morganti/Mars-Normel. Mars-Normel, a New York corporation with an office, place of business, and jobsite in Danbury, Connecticut, has been engaged as a general contractor in the building and construction industry. Morganti, a Connecticut corporation with an office, place of business, and jobsite in Danbury, Connecticut, has been engaged as a general contractor in the building and construction industry. At all times material, Mars-Normel and Morganti have been engaged in a joint venture as the general contractor for the construction of a wastewater treatment facility for the city of Danbury, Connecticut. During the 12-month period ending January 31, 1992, Morganti/Mars-Normel, in the course and conduct of its business oper-

ations, purchased and received at its Danbury, Connecticut jobsite goods valued in excess of \$50,000 directly from points outside the State of Connecticut. Accordingly, we find that Respondent is an enterprise directly engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

2. About March 21, 1988, the Respondent entered into an "Acceptance of Agreements" whereby it accepted and approved the collective-bargaining agreement between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. (AGC) effective May 1, 1987, and the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. (CCIA) effective January 1, 1987, and agreed to be bound to such future agreements unless timely notice was given.

3. About March 21, 1988, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union and since that date the Union has been recognized as such representative by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which are effective by their terms for the period April 1, 1991, to March 31, 1993. For the period from March 21, 1988, through March 31, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

4. About August 1, 1991, the Respondent unilaterally and without the consent of the Union failed to continue in full force and effect all terms and conditions of the agreements described above by failing to make the contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, the Annuity Fund, and the New England

Laborers and Employers Education Trust Fund. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union the opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSIONS OF LAW

1. By unilaterally and without the consent for the Union, failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreements in effect, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) and in violation of Section 8(a)(5) and (1) of the Act.

2. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to continue in full force and effect its collective-bargaining agreements and to make whole unit employees for its failure to adhere to the terms of that agreement requiring contributions on behalf of employees who were employed in the bargaining unit to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund. In the absence of an answer to the complaint, compliance specification and notice of hearing, we find that the amounts required to make the employees whole are as listed in the complaint, compliance specification and notice of hearing and that the obligations of the Respondent will be discharged by making payments to each of the funds in the amounts set forth below opposite their names, plus interest accrued on the amounts to date of payment as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987):

| | |
|-------------------------|------------------------|
| Annuity Fund | \$11,059.50 |
| Health and Welfare Fund | 17,169.00 |
| Pension Fund | 10,327.50 ^Q |
| Training Trust Fund | 1,377.00 ^A |
| Legal Services Fund | 344.26 |

New England Laborers and
Employers Education Trust
Fund

344.26

~~\$29,562.02~~

40,621.52

ORDER

The National Labor Relations Board orders that the Respondent, Dichello Construction, Inc., Plantsville, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees by unilaterally and without the consent of the Union, failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreements in effect between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. and between the Union and the Connecticut Construction Industries Association, Inc. effective by their terms from April 1, 1991, to March 31, 1993.

(b) In any like or related manner interfering within, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect the collective-bargaining agreements between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. and between the Union and the Connecticut Construction Industries Association, Inc. effective by their terms from April 1, 1991, to March 31, 1993, requiring contributions on behalf of employees who were employed in the bargaining unit to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund. The unit is:

All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

(b) Make whole unit employees for its failure to adhere to the terms of those agreements by making payments to each of the funds in the amounts set forth below opposite their names, plus interest accrued on the amounts to date of payment as prescribed in *New Horizons for the Retarded*, supra:

| | |
|-------------------------|-------------|
| Annuity Fund | \$11,059.50 |
| Health and Welfare Fund | 17,169.00 |

| | |
|---|-----------|
| Pension Fund | 10,327.50 |
| Training Trust Fund | 1,377.00 |
| Legal Services Fund | 344.26 |
| New England Laborers and Employers Education Trust Fund | 344.26 |

~~\$29,562.02~~ 40,621.52

(c) Post at its facility in Plantsville, Connecticut, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Laborers' International Union of North America, AFL-CIO as the exclusive collective-bargaining representative of our employees in the appropriate unit by unilaterally and without the consent of the Union, failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreements in effect between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. and between the Union and the Connecticut Construction Industries Association, Inc. effective by their terms from April 1, 1991, to March 31, 1993. The unit is:

All laborers employed by us; but excluding all other employees, and all guards, professional

employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect the collective-bargaining agreements between the Union and Labor Relations Division of the Associated General Contractors of Connecticut, Inc. and between the Union and the Connecticut Construction Industries Association, Inc. requiring contributions on behalf of employees who are employed in the bargaining unit to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund.

WE WILL make whole unit employees for our failure to adhere to the terms of the agreements by making payments to each of the funds in the amounts set forth below opposite their names, plus interest accrued on said amounts to date of payment, with interest:

| | |
|---|-------------|
| Annuity Fund | \$11,059.50 |
| Health and Welfare Fund | 17,169.00 |
| Pension Fund | 10,327.50 |
| Training Trust Fund | 1,377.00 |
| Legal Services Fund | 344.26 |
| New England Laborers and Employers Education Trust Fund | 344.26 |

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DICHELLLO CONSTRUCTION, INC.